

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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:  
YOEL WEISSHAUS, :  
:  
Plaintiff, : 11-CV-06616 (RKE)  
:  
v. :  
:  
PORT AUTHORITY OF NEW YORK AND NEW : 500 Pearl Street  
JERSEY, : New York, New York  
:  
Defendant. : March 20, 2017  
-----X

TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE  
BEFORE THE HONORABLE RICHARD K. EATON  
UNITED STATES JUDGE

APPEARANCES:

For the Plaintiff: YOEL WEISSHAUS, Pro Se

For the Defendant: KATHLEEN G. MILLER, ESQ.  
Law Office of James M. Bagley

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Proceedings recorded by electronic sound recording, transcript  
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1 (Proceedings began at 10:41 a.m.)

2 THE CLERK: The United States District Court,  
3 Southern District of New York is now in session. The  
4 Honorable Judge Richard K. Eaton presiding over Docket 11-CV-  
5 06616, Yoel Weissshaus v. Port Authority of New York and New  
6 Jersey.

7 Will the parties please introduce themselves for the  
8 court starting with the plaintiff's counsel?

9 MR. WEISSHAUS: My name is Yoel Weissshaus. My  
10 address is 235 [inaudible] Avenue, Apartment 2E, [inaudible]  
11 646.

12 MS. MILLER: Good morning, Your Honor. My name is  
13 Kathleen Miller. I'm an attorney for the defendants, Port  
14 Authority of New York and New Jersey.

15 THE COURT: Okay. Let's see, Ms. Miller. Have you  
16 appeared here before in this case?

17 MS. MILLER: I was here in connection with the AAA  
18 case as well as --

19 THE COURT: Not this case but the AAA case. Forgive  
20 me.

21 MS. MILLER: Gibson Dunn was representing the Port  
22 Authority but --

23 THE COURT: I'm sorry.

24 MS. MILLER: Gibson Dunn was representing the Port  
25 Authority on the motion for summary judgment. I appeared on

1 that case on the motion to dismiss in front of Judge Holwell  
2 and then I was here before Your Honor but Gibson Dunn was at  
3 the table during the argument on the motion for summary  
4 judgment in the AAA case.

5 THE COURT: Okay. Great. Great, great, great. But  
6 you have appeared in this case before?

7 MS. MILLER: In this case, yes.

8 THE COURT: Okay, great. Thank you. So I'm going  
9 to do this in reverse order just so that I can be brought up  
10 to date. Ms. Miller, we just -- can we run through what has  
11 happened up until this moment in this case? Mr. Weisshaus,  
12 I'm going to ask you to do the same thing but in a minute.

13 MS. MILLER: Do you want me to go to the podium and  
14 speak into the microphone?

15 THE COURT: Yes, please. The way our system works  
16 you have to be at the lectern and speak into the microphone in  
17 order for a record to be made.

18 MS. MILLER: Do I need to hit a button?

19 THE COURT: Nope.

20 MS. MILLER: I didn't want to get the end and find  
21 out I --

22 THE COURT: Find out that you hadn't been recorded?

23 MS. MILLER: That the cameras were running and I  
24 forgot to -- Your Honor, this is a 2011 lawsuit that Mr.  
25 Weisshaus brought challenging the toll increases. We moved to

1 dismiss. The motion to dismiss was initially granted by Judge  
2 Preska. It then went to the Second Circuit. The Second  
3 Circuit issued its decision on September 20, 2012 affirming in  
4 part and denying in part the motion to dismiss.

5           What they wrote on -- based their decision is we  
6 conclude that the district court properly dismissed Weissshaus'  
7 claims based on his constitutional right to travel insofar as  
8 it is analyzed its claims under the above standard [inaudible]  
9 from the district court's dismissal of its constitutional  
10 claims to the extent that they were brought as a challenge to  
11 the Port Authority imposition of tolls regardless of the  
12 amount.

13           They go on to say we conclude the district court  
14 erred in failing to consider whether Weissshaus had adequately  
15 pleaded a constitutional challenge, the reasonableness of the  
16 amount of the tolls under the dormant -- under the dormant  
17 commerce clause and accordingly we remand the case to the  
18 district court to determine in the first instance whether  
19 Weissshaus has adequately pleaded such a claim or should be  
20 granted leave to amend the claim.

21           Then the court went on to state the district court  
22 should analyze and they note here under Northwest Airlines see  
23 as reasonable if one, it is based on some fair proximation of  
24 the use of the facilities; two, is not excessive in relation  
25 to the benefits conferred; and three, does not discriminate

1 against interstate commerce.

2           It also advised the district court that the court  
3 could stay this action pending the determination of the case  
4 AAA v. The Port Authority of New York and New Jersey which in  
5 fact was done. This case was stayed pending the decision in  
6 that case and --

7           THE COURT: And I stayed it; is that right?

8           MS. MILLER: Yes. The docket -- the docket  
9 indicates, and I was reading it just a moment ago, that Mr.  
10 Weisshaus appealed the decision of the Second Circuit, sought  
11 a petition for certiorari in the United States Supreme Court.  
12 The petition was denied on October 9, 2013. So the only  
13 remaining claim Mr. Weisshaus in the 2011 action is the  
14 dormant commerce clause claim.

15           The three prongs that the Second Circuit indicated  
16 were the relevant prongs to evaluate for determining the  
17 viability of that claim were precisely the three prongs that  
18 Your Honor --

19           THE COURT: I understand the law. So where we stand  
20 at this moment is -- I was reading my own stay. I don't know  
21 if it dissolved of its own -- as a matter of law but I'm going  
22 to put out an order this afternoon that lifts the stay in case  
23 it hadn't been lifted and then where will we stand?

24           MS. MILLER: In my view, Your Honor, this case  
25 should be dismissed sua sponte based on the prior decision of

1 this court of November 18, 2016.

2 THE COURT: Okay. As to where we stand then, the  
3 motion to dismiss comes alive again and that has been briefed.  
4 Is that true?

5 MS. MILLER: The initial motion to dismiss is fully  
6 briefed.

7 THE COURT: Okay. And so that is actually what is  
8 before the court at this moment. Is that right, the motion to  
9 dismiss? Or it will be when I lift the stay.

10 MS. MILLER: Well, if I remake the motion to dismiss  
11 based on the initial papers yes, that would be before this  
12 court. That was decided though.

13 THE COURT: I'm sorry.

14 MS. MILLER: That initial motion was decided. So  
15 it --

16 THE COURT: So where we are right this moment is  
17 we're on the -- we're at the remand.

18 MS. MILLER: Yes.

19 THE COURT: But the remand just brings back to  
20 life -- after I lift the stay what would be back to life will  
21 be a motion to dismiss and Mr. Weisshaus' case will be limited  
22 to the dormant commerce clause.

23 MS. MILLER: Correct.

24 THE COURT: Thank you. Mr. Weisshaus, why don't you  
25 tell me where we stand at this moment.

1           MR. WEISSHAUS: First I'd like to distinguish this  
2 case between the AAA --

3           THE COURT: Don't do that, please. Please just tell  
4 me where we are procedurally at this moment.

5           MR. WEISSHAUS: Procedurally we stand now the court  
6 has stayed the case and the stay has still -- the court has  
7 not lifted the stay formally. Informally it's presumed that  
8 the AAA case has already been decided and there's a motion to  
9 dismiss currently pending by the Port Authority. I would like  
10 to request the court to supplement briefing --

11          THE COURT: Well, hold on a second. So where we --  
12 where we're going to stand this afternoon say when I lift the  
13 stay is that your case will be back alive and that there will  
14 be an outstanding motion to dismiss and the motion -- that  
15 motion -- your case will be limited to the dormant commerce  
16 clause claim. Is that where you think we are?

17          MR. WEISSHAUS: Let me explain. That's why I wanted  
18 to begin with the AAA case but the key is that the first  
19 complaint that I make contain two flaws, that one the  
20 dismissal sua sponte from the court. There was no motion to  
21 dismiss at the time. It was based on the right to travel and  
22 then the Robinson-Patman Act. They were completely flawed and  
23 they weren't a good way of putting forward the case but it  
24 also contained arguments, the facts that could have been  
25 reviewed under the dormant commerce clause.

1 THE COURT: Bring me back. So Judge Preska  
2 dismissed your complaint sua sponte.

3 MR. WEISSHAUS: Well, it wasn't Judge Preska.

4 THE COURT: Who was it?

5 MR. WEISSHAUS: It was Judge Batts. Then it was  
6 transferred to Judge Preska.

7 THE COURT: Who was it first?

8 MR. WEISSHAUS: I think Judge Deborah Batts.

9 THE COURT: Deborah Batts, all right. So Judge  
10 Batts dismissed your complaint sua sponte.

11 MR. WEISSHAUS: Yes, because basically I had filed  
12 as a poor person and as a poor person under the statute of  
13 1915, 28.1915 the courts are required to dismiss a complaint  
14 if on its face there is portions that would be dismissal. For  
15 example, it contain --

16 THE COURT: Okay. Hold on a second, please. I'm  
17 just trying to figure out where we stand. When she dismissed  
18 that complaint, did you appeal it?

19 MR. WEISSHAUS: Yes.

20 THE COURT: And that was what went to the Court of  
21 Appeals?

22 MR. WEISSHAUS: Right. Right.

23 THE COURT: So it's that complaint that went to the  
24 Court of Appeals?

25 MR. WEISSHAUS: Right. The Court of Appeals



1 determined that the court did not review the case under the  
2 dormant commerce clause.

3 THE COURT: Okay. So then the case was remanded.

4 MR. WEISSHAUS: Yes.

5 THE COURT: And then -- was it remanded to Judge  
6 Preska?

7 MR. WEISSHAUS: And Judge Preska transferred it to  
8 the roster of the court and the Southern District assigned it  
9 to Your Honor.

10 THE COURT: Well, first Judge Holwell -- it was --  
11 was Judge Holwell ever in on this one?

12 MR. WEISSHAUS: No.

13 THE COURT: He was never in on this one?

14 MR. WEISSHAUS: Never on the case.

15 THE COURT: So did Judge Preska take any action?

16 MR. WEISSHAUS: Once it was remanded no, but this  
17 court did take action.

18 THE COURT: So I -- I wrote an order as I recall and  
19 I stayed the case.

20 MR. WEISSHAUS: No --

21 THE COURT: No, I didn't?

22 MR. WEISSHAUS: First is the court allowed to amend  
23 the complaint. I amended it to clear up whatever the  
24 confusions were basically setting for the case that my issue  
25 here is the price. Okay. And I'm challenging everything that

1 is incorporated in the price that is extraneous.

2 THE COURT: Okay. Well, I said you could amend the  
3 complaint?

4 MR. WEISSHAUS: Yes.

5 THE COURT: Okay. And you amended the complaint?

6 MR. WEISSHAUS: Yes.

7 THE COURT: And -- hold on a second. I'm just  
8 trying to get this straight. Then was there a new motion to  
9 dismiss on the amended complaint?

10 MR. WEISSHAUS: Yes. That's only one motion.  
11 There's never been another motion.

12 THE COURT: Well, there was a motion to dismiss the  
13 unamended complaint, the initial complaint. Then --

14 MR. WEISSHAUS: No, no, that was sua sponte by the  
15 district court. There was no filing. There was no formal  
16 filing.

17 THE COURT: I get it now. All right. Thank you,  
18 thank you, thank you. You're helping me a lot here. Then  
19 there's the motion to dismiss. So the motion to dismiss is  
20 based -- has only to do with the dormant commerce clause  
21 claim.

22 MR. WEISSHAUS: The motion to dismiss is -- has if I  
23 remember correctly it's focused on one or two things. First,  
24 that it's -- this case is limited by the law of the case from  
25 remand. It argues that it cannot -- the amended complaint was

1 not permitted to include other cause of action. The answer  
2 for it that I provided to --

3 THE COURT: No, no, no. Please don't do that. So  
4 the motion to dismiss has to do with your amended complaint.

5 MR. WEISSHAUS: Right.

6 THE COURT: And --

7 [Pause in proceedings.]

8 MR. WEISSHAUS: Then there was --

9 THE COURT: I'm trying to work this out in my head.  
10 And, Ms. Miller, are you the lawyer -- did you write the  
11 briefs having to do with the motion to dismiss on the amended  
12 complaint?

13 MS. MILLER: Yes, I did, Your Honor.

14 THE COURT: Thank you. Then -- I'm going to give  
15 you another chance to explain all of this to me. Then you put  
16 in papers in opposition to --

17 MR. WEISSHAUS: Correct.

18 THE COURT: Mr. Weisshaus -- to opposition to the --

19 MR. WEISSHAUS: Motion to dismiss.

20 THE COURT: -- motion to dismiss. And are those all  
21 the papers that we have before us at this -- I have before me  
22 at this moment?

23 MR. WEISSHAUS: Currently submitted, yes. I would  
24 like to request the court to supplement that record for two  
25 reasons. One --

1 THE COURT: Hold on a second. If you could sit down  
2 for just a second. I'm just trying to get straight the --  
3 where we stand procedurally.

4 Ms. Miller, do you have anything to add to this  
5 whole where we stand procedurally thing?

6 MS. MILLER: I just -- I just want to clarify the  
7 record, Your Honor.

8 THE COURT: Yes, please.

9 MS. MILLER: There was an order -- and I referred to  
10 Judge Preska's order earlier. The initial order of October  
11 24, 2011 dismissing the complaint was from Judge Deborah  
12 Batts, and she stated in her discussion that affording the  
13 complaint, the liberal reading to which it is entitled the  
14 court nevertheless finds that plaintiff has failed to state a  
15 claim, a valid claim. I'm sorry.

16 Mr. Weisshaus -- then a judgment was issued on  
17 October 24, 2011 and Mr. Weisshaus moved for reconsideration.  
18 Judge Preska then wrote an order and decision dated December  
19 11 -- December 8, 2011 affirming the dismissal by Judge Batts.  
20 That was appealed to the Second Circuit. I then read the  
21 court the decision.

22 After that Mr. Weisshaus served an amended complaint  
23 in this court. We again moved to dismiss. The motion I  
24 believe was fully briefed. I think he submitted an  
25 opposition. I believe we submitted reply papers. At that

1 point Mr. Weisshaus attempted to move for discovery. We  
2 requested a stay. This court put a stay into effect which has  
3 been in effect during the pendency of the AAA proceeding also  
4 from 2011 to 2016.

5 So we submit, Your Honor, that all of the factual  
6 information has been put before this court. The parties --

7 THE COURT: This is a motion to dismiss; right?

8 MS. MILLER: Yes. Yes, but Mr. Weisshaus is now  
9 saying to this court that he wants to amend because he has  
10 additional facts he wants to put before this court. The  
11 issues here are legal issues. All of the discovery -- since  
12 the discovery was done in the AAA case as this court knows it  
13 was referred to Judge Pitman for several years while this  
14 discovery unfolded.

15 There's nothing new that can be added to this case.  
16 So we respectfully submit that no further --

17 THE COURT: I'm going to let you make your argument  
18 in a moment. You can sit down.

19 Now, I guess I have an idea of where we are. Mr.  
20 Weisshaus, what should we do now?

21 MR. WEISSHAUS: There's two steps as the court  
22 obviously will have to decide the motion to dismiss whether to  
23 grant it or deny it. I will request denial but before the  
24 court gets to -- into the decision making of that process I  
25 would like to supplement it with a sur reply or sur opposition

1 and allow the court to [inaudible] the equal rights based on  
2 addressing the AAA decision of what parts the facts of the  
3 complaint, what parts it doesn't affect, and also to  
4 addressing some other developments I've had in this case.

5 Before going to that direction I'd also like to  
6 point out there's procedural differences in this case that the  
7 court acknowledges in its decision in the AAA case that AAA  
8 didn't do its math, they're alleging things that are not in  
9 the complaint and the court refused to decide.

10 My complaint contains most particularly the biggest  
11 issue that had nothing to do with the AAA case. A \$2.00  
12 penalty that the Port Authority charges per axle for every  
13 person who pays with cash. That, for example, is absolutely  
14 has nothing to do with the proximation of facilities. It's  
15 discriminating in interstate commerce because the commerce  
16 clause gives the only regulation of currency to Congress. It  
17 doesn't [inaudible] the states to regulate cash and the fact  
18 that the state is penalizing, the state agency is penalizing  
19 commuters for paying in cash that raises a serious issue of  
20 the commerce clause that was not addressed in AAA case. I can  
21 go on and on and on.

22 THE COURT: You don't have to. Is this particular  
23 issue addressed in the papers that are now before the court?

24 MR. WEISSHAUS: Yes.

25 THE COURT: Oh, it is.

1           MR. WEISSHAUS: In the amended complaint they have  
2 the first cause of action. I've stated it in several  
3 different forms. The Port Authority --

4           THE COURT: But how about in your answer to the  
5 motion to dismiss?

6           MR. WEISSHAUS: I've also addressed it.

7           THE COURT: Okay.

8           MR. WEISSHAUS: The Port Authority argues that it is  
9 barred by the law of the case because it was remanded for the  
10 dormant commerce clause and cannot address this issue. I have  
11 addressed the idea of the law of the case. The law of the  
12 case is -- was -- is a doctrine based on allowing a case to  
13 proceed on its normal course but limit it to the issues that  
14 are not foreclosed. The Second Circuit never foreclosed the  
15 issue of the penalty for payment of cash. Never addressed all  
16 the other arguments in the complaint, all the other claims for  
17 relief. The only thing that the Second Circuit did limit and  
18 throw it out from court was the idea of the right to travel  
19 and the Robinson-Patman Act. Those are the two things in  
20 any -- and also state law action that involves unjust  
21 enrichment because that would have required a notice of claim.

22           The Second Circuit held that I didn't file a timely  
23 notice of claim, et cetera. So those are -- and I'm not  
24 addressing those. Right now it's focused on the dormant  
25 commerce clause what constitutes interstate commerce,

1 discrimination against interstate commerce the court is well  
2 aware is a very broad field of law and it encompasses many  
3 areas of constitution and including that would be the penalty  
4 for payment in cash. That would be a subject that was not  
5 addressed in the AAA case. That's just one of them.

6 THE COURT: Okay. But these things are all  
7 addressed in your papers.

8 MR. WEISSHAUS: Yes.

9 THE COURT: Okay.

10 MR. WEISSHAUS: But what I would like to supplement  
11 if I could ask is first as I mentioned the AAA differences.  
12 Then through this -- I -- as the court may recall I had a  
13 cause of action that the Port Authority was depriving me from  
14 a FOIA request. In the end, the Port Authority did issue a  
15 FOIA request decision and I dismissed that portion of the  
16 complaint without prejudice and commenced an Article 78 action  
17 in state court.

18 From that case came out --

19 THE COURT: You dismissed it without prejudice?

20 MR. WEISSHAUS: Yes.

21 THE COURT: How?

22 MR. WEISSHAUS: I asked the court and the court  
23 allowed it.

24 THE COURT: Was it me?

25 MR. WEISSHAUS: Yes. It was addressed -- there's an



1 order of it.

2 THE COURT: Okay.

3 MR. WEISSHAUS: If I remember correctly. I don't  
4 have it before me but based on my memory.

5 THE COURT: Okay.

6 MR. WEISSHAUS: So it's the fifth claim for relief  
7 which was dismissed without prejudice. The Port Authority did  
8 not object to it.

9 Then we have an Article 78 to review the decision of  
10 the Port Authority in that FOIA request. So some documents  
11 were produced and then the -- to keep the story short is  
12 basically I received some proposal and demonstrations that the  
13 Port Authority had studied what's called affordability  
14 envelope. That means what is the maximum number we can push  
15 the envelope in terms of price. That study was done based on  
16 the papers is in 2008, 2009.

17 After that study was concluded that's when they came  
18 up with this whole budget and this whole capital plan and  
19 that's when -- for example, to point out just briefly, is that  
20 part of the Port Authority -- the -- part of the affordability  
21 plan is the demonstration shows that it's a proposed plan of  
22 the capital plan \$5.2 billion. According to the MBD  
23 affordability envelope, that is \$5.01 billion that would have  
24 brought in those years. So they just brought the budget right  
25 above the capital plan, right above the affordability envelope

1 not considering how it would affect consumers in terms of  
2 price. For example, per axle it cost like two hours working  
3 minimum wage just to pay that toll. All of that we don't know  
4 what was considered until that affordability envelope  
5 documents are released. Those documents -- that request I've  
6 made a new FOIA request to the Port Authority dated May 11th.  
7 We're still waiting for them to decide is what I requested  
8 them to reveal to me the affordability envelope documents.

9           So in terms of -- even if the court wants let's say  
10 considering a motion to dismiss I would ask the court for at  
11 least some discovery before that so we can address like issues  
12 of the affordability envelope because how did they come up  
13 with that price that everyone says is burdensome.

14           THE COURT: Normally there isn't any discovery  
15 related to the motion to dismiss.

16           MR. WEISSHAUS: But it could be turned into a motion  
17 to defer to summary judgment like it was done in the AAA case.  
18 So that's an option just to mention.

19           THE COURT: Thank you. Ms. Miller, what do you have  
20 to say to all of that?

21           MS. MILLER: I'm not sure I quite understand  
22 everything Mr. Weisshaus is asking for, Your Honor. If he's  
23 asking this court or telling this court that he's only  
24 proceeding on the dormant commerce clause claim I think that's  
25 been fully briefed and the question of whether there was a

1 study to determine the maximum amount they can raise the tolls  
2 is pretty irrelevant to the fact. They've already made the  
3 decision. The tolls went into effect. Those amounts were  
4 evaluated by this court very thoroughly, a decision of  
5 November 2016 on the summary judgment in AAA.

6           There are no further facts to be added. Some  
7 preliminary study that was done before the tolls were raised  
8 is completely irrelevant. It's the number that the tolls are  
9 that this court looked at. I know Mr. Weisshaus objects to  
10 the fact that there's additional price. The tolls are cheaper  
11 if you pay by EZ-Pass because they don't have to man the toll  
12 booths obviously. If you're paying by cash you're paying the  
13 full value of the toll. There's a discount. Not a penalty.  
14 There's a discount if you pay by EZ-Pass and there are  
15 discounts if you buy multiple EZ-Pass commuter tickets but Mr.  
16 Weisshaus' objection to the tolls unreasonably burdening the  
17 poor as this court recognized as every court has recognized  
18 since 1989.

19           The bridges and the tunnels are part of an  
20 interstate commerce system that also includes the ferries and  
21 the path trains which provide much lower rates for  
22 transportation across the Hudson. So it's not a single choice  
23 that one person has to make. There are a number of options,  
24 many cheaper options to crossing the Hudson River than driving  
25 over the George Washington Bridge.

1 But this court has analyzed thoroughly in its  
2 decision the tolls, the amount of the tolls and the criteria  
3 under the Northwest Airlines case for evaluating whether those  
4 tolls were a violation of the dormant commerce clause and  
5 there's no reason to go back and open discovery into the same  
6 facts because there are no new facts, and go through that  
7 process again.

8 I would just like to remind the court that in the  
9 Second Circuit decision to the extent that Mr. Weissshaus is  
10 asking to bring any other state claims, the Second Circuit  
11 noticed that -- noted, sorry, that Mr. Weissshaus' failure to  
12 serve a notice and claim before filing suit deprived the  
13 district court of jurisdiction over any state law claim. So  
14 there is no possibility for bringing state law claims here  
15 because that notice of claim has to be filed within one year  
16 of the incident and Mr. Weissshaus failed to do that.

17 The court also addressed Mr. Weissshaus' argument  
18 before the Second Circuit that he had failed to bring a number  
19 of meritorious claims that he now wanted to bring in the case  
20 and they pointed out that Rule 59 was not an opportunity to  
21 get a second bite out of the apple by adding new claims. They  
22 said in fact it is well settled that Rule 59 governing the  
23 motions to alter, amend a judgment is not a vehicle for  
24 presenting the case under new theories or otherwise taking a  
25 second bite of the apple.

1           So to the extent Mr. Weisshaus is asking this court  
2 to consider new claims or new matters I believe that the  
3 Second Circuit has already disposed of that. Thank you.

4           THE COURT: So as far as things that can be  
5 settled -- that can be brought up today, Mr. Weisshaus, you  
6 would like supplemental briefing. Is this true?

7           MR. WEISSHAUS: Yes.

8           THE COURT: Okay. So if you could talk in the  
9 lectern and just say is -- as precisely as you can what you  
10 would like to do in this supplement briefing.

11           MR. WEISSHAUS: Okay. In the supplemental briefing  
12 will address the differences based on the decision of the AAA  
13 case. The differences between my case to the AAA case because  
14 there's been a lot of overlapping. Obviously there's been a  
15 relationship but AAA was fishing the whole time whether the  
16 money was being used for the World Trade Center. Fine. No  
17 problem. Those two, three paragraphs in the complaint, in the  
18 amended complaint that mention the World Trade Center I'm  
19 willing to dismiss it without prejudice so they don't confuse  
20 the court.

21           THE COURT: Well, if I were going to dismiss them I  
22 would dismiss them with prejudice. Wouldn't I?

23           MR. WEISSHAUS: Well, assuming that the rest of the  
24 amended complaint is valid. It's able to go forward. That's  
25 point one. Then there is the concept of the rest of the

1 complaint which was not addressed in the AAA decision. For  
2 example, the surcharge.

3 If I can brief the court. In 2008 when the Port  
4 Authority increased the toll price it was \$8.00 per axle. The  
5 discount was offered for those who paid EZ-Pass. It went to  
6 \$6.00.

7 THE COURT: I understand. This is in your papers;  
8 right?

9 MR. WEISSHAUS: Yes.

10 THE COURT: Okay. If you don't -- just say  
11 precisely as you can -- we'll start again. What you would  
12 put -- what matters would be covered in the supplemental  
13 briefing.

14 MR. WEISSHAUS: Okay. Number one, that the court  
15 said in the decision, in the AAA --

16 THE COURT: The first thing is the distinction, the  
17 differences between the --

18 MR. WEISSHAUS: AAA and my case.

19 THE COURT: Your case and AAA. What? Tell me.

20 MR. WEISSHAUS: Yes. Then I would like to briefly  
21 just address how the affordability envelope would make --  
22 would have made a difference in my opposition to the motion to  
23 dismiss and how it could help aid in the case going forward.  
24 A brief discussion.

25 THE COURT: These are facts that you have learned

1 from the FOIA requests.

2 MR. WEISSHAUS: Right.

3 THE COURT: Okay.

4 MR. WEISSHAUS: It would have changed even the  
5 posture of the amended complaint.

6 THE COURT: Okay. And then anything else?

7 MR. WEISSHAUS: Yes. And also if I can point out  
8 just to reply that the surcharge of \$2.00 is on top of the  
9 regular price of the per axle. In other words --

10 THE COURT: But that's already contained in your  
11 initial opposition to the motion to dismiss; isn't it?

12 MR. WEISSHAUS: Yes. I just wanted to reply to  
13 that.

14 THE COURT: Okay. All right.

15 MR. WEISSHAUS: So the record indicates my position.

16 THE COURT: Okay.

17 MR. WEISSHAUS: In terms of like -- of looking  
18 towards discovery I'm also not looking to go this whole  
19 direction that AAA went because my case is not so much about  
20 fishing or whether the Port Authority has an email somewhere  
21 about using the money for World Trade Center, et cetera. This  
22 case is all about the price. It's how it affects people who  
23 pay the price. It looks at the minimum wage and the toll  
24 being doubled than the minimum wage. It looks at the income  
25 taxes a person pays for working in a regular day in New York

1 City, income taxes taken combined and the toll is double than  
2 that amount of money. Obviously if the legislative would  
3 increase minimum wage --

4 THE COURT: That's okay. I understand. That's the  
5 next -- is there anything else you'd like to put in your  
6 papers?

7 MR. WEISSHAUS: That's it. I'd like to stick to  
8 addressing those two differences. Thank you.

9 THE COURT: Thank you. You can sit down.

10 Ms. Miller, is there any reason why there shouldn't  
11 be supplemental briefing here? You have to come up to the  
12 lectern. I'm afraid --

13 MS. MILLER: Well, if it's not too burdensome for  
14 the court I have no objection to supplemental briefing as long  
15 as we get to respond to whatever it is Mr. Weisshaus is adding  
16 to the motion to dismiss.

17 THE COURT: All right. Thank you. Now, is there  
18 anything else we should -- I'm grateful to you both for  
19 bringing me up to date on this. Is there anything else we  
20 should take up today?

21 MS. MILLER: I don't believe so, Your Honor.

22 THE COURT: Mr. Weisshaus.

23 MR. WEISSHAUS: I would submit to the court  
24 [inaudible].

25 THE COURT: Thanks. Well, I'm going to take all



1 this under advisement. At a minimum this afternoon I'll put  
2 out an order that lifts the stay and then I'll think about Mr.  
3 Weisshaus' motion for supplemental briefing and we'll go from  
4 there. So thank you both very much.

5 THE CLERK: All rise.

6 MR. WEISSHAUS: Thank you.

7 THE CLERK: The court stands adjourned.

8 (Proceedings concluded at 10:41 a.m.)

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1 I certify that the foregoing is a court transcript from  
2 an electronic sound recording of the proceedings in the above-  
3 entitled matter.

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6 Shari Riemer, CET-805

7 Dated: April 5, 2017  
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